

Résumé

Trademarks

The topic of my diploma thesis is trademarks. The purpose of this work is to discuss the fundamental issues concerning trademarks including types of trademarks especially non-traditional ones, trademark registration application procedure in the Czech Republic and other related topics.

A trademark is a designation which serves to differentiate products or services on the market. The purpose of a trademark is to distinguish goods and services of one producer from those of another. This designation helps consumers to find goods and services and to select the product that they want. Trademarks therefore become an integral part of our lives.

Trademarks in the Czech Republic are governed by Act No. 441/2003 Coll., on Trademarks, Regulation No. 97/2004 Coll., concerning implementation of the Trademark Act and the protection of trademarks is ensured by Act No. 221/2006 Coll., on Enforcement of Industrial Property Rights.

A trademark can only be a designation which can be graphically represented and which is capable of distinguishing products or services for which it is protected from other identical products or services on the market. A trademark therefore cannot exist on its own, but always in connection with certain products or services which it designates. An applicant submits a trademark application to the Industrial Property Office in Prague. The right to a trademark arises from the registration in the relevant trademark register maintained by the Industrial Property Office. The trademark owner then has exclusive right to the trademark and nobody can use such designation for the same or similar products or services without the owner's prior consent.

This thesis is divided into twelve chapters, each of them dealing with different aspects of trademarks.

Chapters One and Two give basic information about intellectual property and industrial property in connection with trademarks.

Chapter Three deals with the trademark legislation in the Czech Republic and in the European Union and it also addresses the most important international treaties which ensure trademark protection.

Chapter Four introduces the concept of trademarks in general, their functions and is also concerned with the matter of trademark valuation.

Chapter Five focuses on the types of trademarks. This chapter is divided into eight sections according to the types of trademarks and presents various examples of such designations.

Chapter Six analyses four areas of the judgments of the European Court of Justice that concentrate on the types of non-traditional trademarks – olfactory trademarks, sound trademarks, colour trademarks and three-dimensional trademarks. It deals with the issues concerning non-traditional designations, namely the method of their registration, because such designations do not primarily fulfil the basic requirements for registration and granting of protection, i.e. graphic representation and distinctive character.

Chapter Seven introduces a new approach to the eligibility for registration of non-traditional designations with regard to the negotiations conducted by the World Intellectual Property Organization. This chapter focuses on the new types of non-traditional designations and presents possible methods of registration of three-dimensional trademarks, colour trademarks, holograms, motion or multimedia trademarks, position trademarks, gesture trademarks, sound trademarks, olfactory trademarks, taste trademarks, sensational or tactile trademarks.

Chapter Eight deals with the absolute and relative obstacles to eligibility for registration in the register maintained by the trademark office.

Chapter Nine concentrates on the trademark application procedure in the Czech Republic, particularly on the individual parts of such procedure before the Industrial Property Office.

Chapters Ten, Eleven and Twelve deal with a trademark registration in the register after it fulfils the required conditions as well as trademark validity and reasons for trademark extinguishment.

The main aim of the thesis is to provide relevant information about trademarks with the focus on non-traditional designations, since such designations represent an area of a new approach to the trademark law. There are many methods how to ensure protection of non-traditional designations, however, I personally believe that there is room for new institutes to be established which could look after the needs of traders better than the current definition of a trademark. The number of non-traditional designations submitted for registration keeps rising and therefore we need rules which will satisfy the growing demand.